IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2584 OF 2006

Smt. Parul Apurvakumar Dalia ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. A.M. Sarogi for the petitioner.

Mr. F.R. Shaikh, A.P.P. for respondent 1.

Mr. M.G. Samdani, respondent 2 appears in person.

CORAM : SMT. RANJANA DESAI, J.

DATED : 14TH DECEMBER, 2006.

P.C. :-

1. The petitioner is accused 5 in C.C. No.435/SW/05 pending on the file of the Additional Chief Metropolitan Magistrate, 24th Court at Borivli, Bombay. The petitioner along with five others is charged under sections 420 and 120-B of the Indian Penal Code (for short, "the IPC") and section 68 of the Companies Act read with section 34 of the IPC. The petitioner is at present in the United States of America (for convenience, "USA"). The present petition is filed by her through her advocate. She has prayed that the proclamation issued against her in Case No.435/SW/2005 be quashed.

2. The case of respondent 1, who is the original complainant, is that the petitioner had been the Director of Midastouch Dyes & Intermediaries Limited (for convenience, “the said Company”). According to respondent 1, the said Company by publishing lucrative prospectus of the said Company made respondent 1 to purchase shares of the said Company. In short, the case of respondent 1 is that the said Company and its Directors have made false representations and have defrauded him and the members of his family.

3. It appears that the petitioner got married on 18/2/1997. According to the petitioner, she left India on 12/3/1997. She is now working in USA and has settled down there. After the complaint was filed in the court by respondent 2, process was issued against the petitioner. It is the case of the petitioner that summons was not served on her and, therefore, she could not remain present before the learned Magistrate. In all, six cases are pending against the petitioner. In the circumstances, non-bailable warrants were issued. Proclamations also came to be issued under section 82 of the Code of Criminal Procedure (for short, “the Cr.P.C.”) in all the six cases. The petitioner challenged the same in this court by filing writ petitions.

4. By order dated 23/11/2005, this court kept the proclamations in abeyance for a period of five weeks to enable the petitioner to personally appear before the concerned Magistrate. This court further directed that if the petitioner failed to appear before the Magistrate, it will be open to the trial court to proceed as if the order of proclamation is revived. This court further observed that after the petitioner has made appearance before the concerned Magistrate, he would proceed to decide all derivative applications taken out by the petitioner in particular, with regard to prayer for bail on the same day on which she presents herself before the trial court. This court recorded the statement of the learned counsel for the petitioner that on reaching India, the petitioner will stay back in India for around four weeks, so that, the trial of the case in question will proceed on day-to-day basis within that period as only around five to six witnesses are to be examined. This court observed that this arrangement was made considering this fact coupled with the fact that the case pertains to the year 1997. The trial court was directed to dispose of the case within a period of six weeks. The petitions were thus disposed of.

5. Pursuant to this order, the petitioner came to India. She presented herself before the learned Magistrate. The learned Magistrate released her on bail. It, however, appears that she did not

furnish the surety. Though she had given a written undertaking before the learned Magistrate that she would remain in India upto 6/1/2006, she did not abide by that undertaking and she left India on 5/1/2006.

6. Respondent 1, therefore, made an application for cancellation of the bail bonds of the petitioner and issuance of non-bailable warrants against her. When the above facts were brought to the notice of the learned Magistrate, he forfeited the bail bonds and issued non-bailable warrant against the petitioner and made it returnable on 7/2/2006. Respondent 1 made an application for issuance of proclamation. Pursuant to that application, the learned Magistrate by his order dated 16/2/2006 issued warrant of proclamation against the petitioner. In his order, the learned Magistrate narrated all the facts which are stated hereinabove. The learned Magistrate observed that the petitioner has by not remaining present for the trial disobeyed the order of this court. He observed that the this court had directed, inter alia, that this case may be disposed of on day-to-day basis within a period of six weeks. However, the petitioner was not co-operating with the court by attending to the case and, therefore, the warrant of proclamation was being issued against her. The petitioner by this petition seeks quashing of this proclamation.

7. I have heard Mr. Sarogi, the learned counsel appearing for the petitioner and respondent 1, who has argued this case in person.

8. Mr. Sarogi, the learned counsel for the petitioner submitted that it is true that the petitioner has not abided by this court's order. He submitted that it is true that the petitioner has not furnished the surety. Mr. Sarogi submitted that it is not possible to justify this conduct of the petitioner. He tendered in this court affidavit of the brother of the petitioner - Mr. Manish Shah, wherein Mr. Shah has stated that the petitioner intends to return to India. The brother of the petitioner has tendered an unconditional apology on behalf of the petitioner for not remaining in India and not informing the court before leaving India. In his affidavit, he has taken the responsibility of all the cases pending before the trial court and he has stated that even in the petitioner's absence, he undertakes to this court to defend the pending cases on behalf of the petitioner and take all necessary steps in the matter. This affidavit is taken on record and marked “X”. The apology tendered by the brother of the petitioner and the undertaking is accepted by this court. Mr. Sarogi has also tendered apology on behalf of the petitioner. That is accepted by this court.

9. Mr. Sarogi submitted that the petitioner through her brother has

conveyed that she wishes to tender apology to this court. He submitted that the petitioner now wants to participate in the trial and ensure its expeditious disposal. The petitioner is a married lady. She is serving in USA. In the peculiar facts and circumstances of the case, though the petitioner has flouted the order of this court, a kindly view may be taken and one more chance be given to the petitioner to show her bona fides and participate in the trial. Respondent 1 has strenuously opposed the cancellation of the proclamation. He submitted that the conduct of the petitioner should not be condoned by this court.

10. The petitioner has flouted the order of this court. The learned Magistrate has, therefore, rightly issued the proclamation. It is not possible to cancel the proclamation. However, in the peculiar facts and circumstances of the case, in my opinion, in the light of the affidavit filed by the brother of the petitioner and the submissions made by Mr. Sarogi, the learned counsel appearing for the petitioner, I direct that if in pursuance of the proclamation, the petitioner presents herself before him, he should take the above facts into consideration and pass appropriate orders taking care to ensure that appropriate conditions are put on the petitioner so that she stays in India and ensures speedy disposal of the pending cases. The outer limit placed by this court is 31/12/2006. The learned Magistrate should ensure that the trial gets

over within the said time-frame. Needless to say that if any extension is required, he can always make a reference to this court and considering the circumstances, reasonable extension may be granted by this court in accordance with law. In the facts and circumstances of the case, however, the petitioner will have to give a bank guarantee in the sum of Rs.12 lakhs to the satisfaction of the trial court. The bank guarantee should be kept alive till the conclusion of the trial. Needless to say that the fact that this court has directed the petitioner to furnish a bank guarantee in the sum of Rs.12 lakhs does not mean that respondent 1's claim is only of Rs.12 lakhs. I have not examined in these proceedings as to what exactly is the liability of the petitioner and what exactly is the claim of respondent 1. All the contentions of both sides are kept open. The petitioner shall appear before the trial court within a period of two weeks from today.

11. Though I have not cancelled the proclamation, I keep it in abeyance only for a period of two weeks to enable the petitioner to come and present herself before the learned Magistrate. In the peculiar facts and circumstances of the case, I feel that the petitioner must be saddled with costs quantified at Rs.25,000/-. The petitioner must pay the said costs to respondent 1 within a period of two weeks from today. The petitioner has been given one more chance to show her bona fides.

If this time, the petitioner flouts any directions of the court, serious note will have to be taken of such behaviour.

12. The petition is disposed of.

[SMT. RANJANA DESAI, J.]